IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| MARY BONETT,<br>Plaintiff, | : | CLASS ACTION |
| v. | : | NO. 01-6528 |
| EDUCATION DEBT SERVICES, INC., et al.,<br>Defendants. | : | |

**MEMORANDUM AND ORDER**

Davis, J. May 9, 2003

**MEMORANDUM**

## I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

On behalf of herself and other similarly situated plaintiffs, Mary Bonett commenced a class action lawsuit on December 18, 2001, against Defendants Education Debt Services, Inc. ("EDSI"), and United Student Aids Funds, Inc. ("USA Funds"), alleging violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA"). The purpose of the FDCPA is to prevent collectors from engaging in abusive, deceptive, and/or unfair collection practices. Plaintiff alleges that debt collections letters sent to her, and substantially similar letters sent to approximately 1,969 other debtors, violated the FDCPA by: (i) using threatening language and demanding Plaintiff to "act now"; (ii) deceptively and falsely implying that the defaulted loan had not been reported to the national credit bureaus at the point that the letters were sent; (iii) threatening collection costs of 19%, in violation of § 1692f(1); (iv) failure to disclose the right to dispute "any portion" of the debt, in violation of § 1692g(a)(4); and (v) falsely advising that all debt disputes must be made within thirty days of the date of the letter, rather than thirty

days from the receipt of the letter, in violation of § 1692g.

On January 31, 2003, Plaintiff made a Motion for Preliminary Approval of Settlement, and for Approval of Notice to the Class (Document No. 36, filed January 31, 2003), and on February 4, 2003, the Court granted the Motion and scheduled a final approval hearing for April 23, 2003 (Document No. 38, filed February 11, 2003). The Plaintiff defines the Class as "all persons in the Commonwealth of Pennsylvania who, during the one year prior to the filing of the action, were sent collection letters substantially in the form of the letters attached to the Complaint in connection with the collection of debts incurred for non-business purposes, which letters were not returned as undeliverable by the Postal Service." (Document No. 19, at p. 2). The 1,969 members of the class have been notified by first-class mail of the proposed settlement and Plaintiff now moves for Approval of the Class Action Settlement and Award to the Representative Plaintiff (Document No. 40, filed April 11, 2003), and for Attorneys' Fees and Reimbursement of Expenses (Document No. 41, filed April, 11, 2003). A total of 284 Class members have returned Claim Forms. No proposed class members appeared at the final approval hearing to object to the settlement, and only one member has sought to be excluded from the class.

## II. DISCUSSION

Before this Court can grant final approval of the settlement, the plaintiff must demonstrate that the proposed class satisfies the requirements of Rule 23. Fed. R. Civ. P. 23; Barnes v. American Tobacco Co., 161 F.3d 127, 140 (3d Cir. 1998); see also In re General Motors Corp. Pick-Up Truck Fuel Tanks Prods. Liab. Litig., 55 F.3d 768, 800 (3d Cir.), *cert. denied*, 516 U.S. 824, 116 S. Ct. 88, 133 L. Ed. 2d 45 (1995)("'a class is a class is a class,' and a

settlement class, if it is to qualify under Rule 23, must meet all of its requirement.").

**A. Rule 23(a)**

Rule 23(a), Prerequisites to a Class Action, states that:

> One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

"These four elements are often referred to as numerosity, commonality, typicality, and adequacy of representation, respectively." See In re LifeUSA Holding, Inc., 242 F.3d 136, 143 (3d Cir. 2001); In re Linerboard Antitrust Litig., 203 F.R.D. 197, 205 (E.D. Pa. 2001)(citing Hanrahan v. Britt, 174 F.R.D. 356, 361 (E.D. Pa. 1997)).

1. Numerosity

"Numerosity requires a finding that the putative class is so numerous that joinder of all members is impracticable." Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 259 F.3d 154, 182 (3d Cir. 2001). However, "[t]he exact number or identity of the members of the plaintiff class is not required." Hanrahan, 174 F.R.D. at 362. Plaintiff has submitted that the Class consists of 1,969 members (Document No. 24, ex. A, at p. 3), and the Defendants do not dispute that the joinder of all members of the proposed Class is impracticable. Therefore, the proposed Class satisfies the numerosity requirements under Rule 23(a)(1).

2. Commonality

Commonality demands that there are "questions of law or fact common to the class."

Fed. R. Civ. P. 23(a)(2). This requirement is not overbearing and is satisfied if there is "at least one question of fact or law with the grievances of the prospective class." Stewart v. Abraham, 275 F.3d 220, 227 (3d Cir. 2001)(quoting Baby Neal v. Casey, 43 F.3d 48, 56 (3d Cir. 1994)). Additionally, the Class members need not share precisely identical claims, as "factual differences among the claims of the putative class members do not defeat certification." Baby Neal, 43 F.3d at 56. Generally, courts have held that the commonality requirement is satisfied when "the defendants have engaged in standardized conduct towards members of the proposed class by mailing to them allegedly illegal form letters or documents." Saunders v. Berks Credit and Collections, Inc., 2002 WL 1497374 at *6 (E.D. Pa. July 11, 2002)(citing Keele v. Wexler, 149 F.3d 589, 594 (7th Cir. 1998)). Furthermore, courts in this district have previously conferred commonality on debt collection letter class action lawsuits. See, e.g., Oslan v. Collection Bureau Hudson Valley, 206 F.R.D. 109 (E.D. Pa. 2002)(certifying class of Pennsylvania consumers who were sent standard form collection letters); Schilling v. Let's Talk Cellular and Wireless, 2002 WL 391695 (E.D. Pa. Feb. 6, 2002)(same). Plaintiff claims that the standardized debt collection letters sent to her, and 1,969 similarly situated Class members, suffices to show commonality of law or fact, and this Court agrees.

3. Typicality

Typicality requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). The central inquiry in a typicality evaluation is whether "the named plaintiff's individual circumstances are markedly different or . . . the legal theory upon which the claims are based differs from that upon which the claims of other class members will perforce be based." Eisenberg v. Gagnon, 766 F.2d 770, 786 (3d

Cir. 1985)(quoting Weiss v. York Hosp., 745 F.2d 786, 809 n.36 (3d Cir. 1984), *cert. denied*, 470 U.S. 1060, 105 S. Ct. 1777, 84 L. Ed. 2d 836 (1985)); see Oslan, 206 F.R.D. at 111. "The heart of this requirement is that the plaintiff and each member of the represented group have an interest in prevailing on similar legal claims." Seidman v. American Mobile Systems, Inc., 157 F.R.D. 354, 360 (E.D. Pa. 1994); see also Hanrahan, 174 F.R.D. at 356 (typicality is established where the claims of all class members are based on the same systematic conduct and legal theories).

Mary Bonett asserted several claims in her Complaint--some are unique to Bonett (Document No. 1, at pp. 5, 9), and others Bonett shares with the proposed Class (Document No. 1, at passim). However, Bonett's additional claims do not render her claims, as a class representative, atypical from the claims of the Class. Bonett's claims against the Defendants arise from the same initial event or practice--the letter(s)--as those asserted by the Class. See Hanrahan, 174 F.R.D. at 363 ("'Factual differences will not render a claim atypical if the claim arises from the same event or practice or course of conduct that gives rise to the claims of the class members, and if it is based on the same legal theory.'"(quoting Hoxworth v. Blinder, Robinson & Co., Inc., 980 F.2d 912, 923 (3d Cir. 1992))). Furthermore, the FDCPA explicitly permits recovery for the representative plaintiff on additional claims not shared with the Class. 15 U.S.C. § 1692k(a)(2)(B)(i); Fry v. Hayt, Hayt & Landau, 198 F.R.D. 461, 468-69 (E.D. Pa. 2000)(named plaintiff with individual claims and class claims under FDCPA satisfied the typicality requirement). This Court finds that Bonett's claims are typical of the Class's claims; Bonett has satisfied the typicality requirement under Rule23(a)(3).

4. Adequacy

Rule 23(a)(4) tests the class representative's fairness and adequacy towards the class's interests. The courts have adopted a two-prong fairness and adequacy analysis: (i) whether the plaintiff's counsel is competent to conduct a class action; and (ii) whether the class representative's interests are not antagonistic to the class's interests. See General Motors, 55 F.3d at 800-01. Plaintiff's counsel is clearly competent to conduct this class action lawsuit, and there can be no objective dispute to their qualifications. See, e.g., Saunders, 2002 WL 1497374 at *8 ("Defendants do not challenge the qualifications of Saunders' counsel [Francis & Mailman P.C.] and the Court finds them to be well qualified"); Oslan, 206 F.R.D. at 112 ("Francis & Mailman P.C. and Donovan Searles LLC, possess sufficient qualifications, skill, and experience in consumer law and class action practice to prosecute this suit to its conclusion."). Lastly, Bonett's interests do not appear to be antagonistic to the Class's interests. Accordingly, this Class has surpassed the preliminary procedural hurdles imposed by Rule 23(a).

**B. Rule 23(b)**

Before the Court can certify a class, the class must also satisfy at least one of the three subsections of Rule 23(b). When a class's primary prayer is for monetary damages, and individuals are given the opportunity to opt out of the pending litigation, the courts are instructed to evaluate the class action under Rule 23(b)(3).[1] See Eisen v. Carlisle & Jacquelin, 417 U.S.

[1] The Plaintiff attempted to maintain this class action concurrently under Rule 23(b)(2) and (3), however, Plaintiff's counsel was reminded at oral arguments on class certification, before the Honorable Norma L. Shapiro, on March 15, 2002, that there are dramatic differences between (b)(2) and (b)(3) class actions, and that a class action can not be maintained under both sections. Ostensibly, Plaintiff seeks class certification through Rule 23(b)(3), thereby affording the Class monetary statutory damages under the FDCPA and enabling Mr. Paul H. Nobel to opt out of the Class.

156, 173, 94 S. Ct. 2140, 2150, 40 L. Ed. 2d 732 (1974); Girsh v. Jepson, 521 F.2d 153, 158-59 (3d Cir. 1975); see also Kyriazi v. Western Elec. Co., 647 F.2d 388, 393 (3d Cir. 1981)("if the case falls within Rule 23(b)(2), class members are not entitled to notice of the pendency of the action and may not opt out; subsection (c)(2) mandates such notice and opt out procedures only for class actions maintained under Rule 23(b)(3), in which the interests of class members are heterogeneous but common questions of law and fact predominate."). No similar opt out right exists for Rule 23(b)(2) classes. Wetzel v. Liberty Mut. Ins. Co., 508 F.2d 239, 248-49, 252-53 (3d Cir.), *cert. denied*, 421 U.S. 1011, 95 S. Ct. 2415, 44 L. Ed. 2d 679 (1975).

To certify a class action under Rule 23(b)(3), the Plaintiff must satisfy the elements of predominance and superiority. In re Prudential Ins. Co., 148 F.3d 283, 313 (3d Cir. 1998). Predominance "tests whether the proposed classes are sufficiently cohesive to warrant adjudication by representation." Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 623, 117 S. Ct. 2231, 2249, 138 L. Ed. 2d 689 (1997); In re LifeUSA, 242 F.3d at 144. Superiority requires that the "class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b)(3).[2]

Predominance is readily satisfied, where the core claims asserted by each Class member all arise out of the same transaction or occurrence--the receipt of debt collection letter(s) from the Defendants. The minor factual distinctions between each particular letter is irrelevant, so long as

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[2] Rule 23 (b)(3) outlines relevant factors for predominance and superiority determinations: (A) the interest of members of the class in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class; (C) the desirability or understandability of concentrating the litigation of the claims in the particular forum; (D) the difficulties likely to be encountered in the management of a class action.

each Class member received the debt collection letter(s), and the legal recourse asserted by the Class is based upon the receipt of the letter(s). See, e.g., Saunders, 2002 WL 1497374 at *8 ("In this case in which defendants sent substantially similar debt collection letters to members of the Berks Subclass and Kozloff Subclass 'common questions of law and fact predominate because of the virtually identical factual and legal predicates of each class member's claim.'" (quoting Smith v. First Union Mortgage Corp., 1999 WL 509967 at *2 (E.D. Pa. July 19, 1999))); Oslan, 206 F.R.D. at 112 ("factual and legal issues involved are identical because each member of the proposed class received substantially similar letters from the defendant."). Additionally, a class action suit is superior to a plethora of individual suits based upon substantially similar factual presentations and legal analysis, particularly where the individual costs of litigation substantially outweigh the maximum potential recovery. See also Saunders, 2002 WL 1497374 at *8 ("A class action is superior to individual lawsuits in this case because it provides an efficient alternative to the infeasibility of pursuing individual small claims, each seeking relief for violations of federal and state law with respect to substantially similar debt collection letters, whose individual litigation expenses would exceed any potential recovery."). Therefore, the Court will certify this class action suit pursuant to Rule 23(a) and (b)(3).

**C. Rule 23(e)**

After class certification, Rule 23(e) requires the district court to determine that the proposed settlement is fair, adequate, and reasonable.[3] General Motors, 55 F.3d at 785.

[3] Rule 23(e) provides that, "A class action shall not be dismissed or compromised without the approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the class in such manner as the court directs." Fed. R. Civ. P. 23(e).

Generally, district courts are afforded a broad degree of discretion in evaluating class action settlement proposals, and will be reviewed on an abuse of discretion standard. Bryan v. Pittsburgh Plate Glass Co., 494 F.2d 799, 801 (3d Cir. 1974). In Girsh, the Third Circuit outlined a nine factor test for evaluating the fairness, adequacy, and reasonableness of a proposed class action settlement. 521 F.2d at 157. The nine Girsh factors include: (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund in light of all the attendant risks of litigation. Id.; Prudential, 148 F.3d at 317.

1. Complexity, expense, and likely duration of litigation

Absent settlement, this case would likely embark on a protracted course to trial, forcing both sides to engage in costly merits discovery and trial preparations Furthermore, the interpretation of the FDCPA is contested by both parties, and it would be realistic to expect at least one appeal, pending this Court's resolution of the case. Considering these factors, this case is an ideal candidate for immediate settlement, resulting in the avoidance of unnecessary delays and monetary expenditures by both parties. See General Motors, 55 F.3d at 812 (lengthy discovery and ardent opposition from defendant were factors favoring settlement, which offers immediate benefits and avoids delays and expense).

2. The reaction of the class to the settlement

Defendants mailed notices to 1,969 class members, advising each member of the settlement structure and their right to opt out of the class. No member of the class objected to the proposed settlement, and only one member opted out of the class. The lack of dissenting class members and/or members exercising the opt out right further evidences that the proposed settlement is fair, adequate, and reasonable. See Stoetzner v. U.S. Steel Corp., 897 F.2d 115, 118-19 (3d Cir. 1990)(29 objections out of 281 class members "strongly favors settlement"); Fischer v. Madway, 485 A.2d 809, 813 (Pa. Super 1984)(14 objection out of 1000 class members supports settlement).

3. The stage of the proceedings and the amount of discovery completed

The parties arrived at an arms-length settlement only after a thorough round of document discovery and depositions. Therefore, during the numerous and adversarial settlement conferences, "the parties certainly [had] a clear view of the strengths and weaknesses," of their case. In re Warner Communications Securities Litig., 618 F. Supp. 735, 745 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986). Furthermore, counsel to both parties are most in touch with the facts in this case, and since the Court is "confident there was no collusion," Saunders, 2002 WL 1497374 at *10, among the lawyers in the settlement, considerable weight will be given to the views of experienced counsel as to the merits of the settlement. See also Lake v. First Nationwide Bank, 900 F. Supp. 726, 732 (E.D. Pa. 1995)("Significant weight should be attributed to the belief of experienced counsel that settlement is in the best interest of the class."); Saunders, 2002 WL 1497374 at *10 ("The Court is therefore deferential to the reasoned judgment of the well-informed attorneys.").

4. The risks of establishing liability

There was a substantial risk for the Class that the Court might have ruled that, as a matter of law, the form collection letter(s) did not violate the FDCPA. See Wilson v. Quadramed Corp., 225 F.3d 350 (3d Cir. 2000). Furthermore, Defendant USA Funds submitted a motion for summary judgment, which was left unresolved as of the date of settlement, contending that USA Funds is not a "Debt Collector" under the FDCPA; settlement also eliminated the substantial risk that the Court could have granted USA Funds's summary judgment motion. The risks associated with establishing Defendants' liability also weighs in favor of settlement.

5. The risks of establishing damages

The proposed settlement also extinguishes the substantial risks associated with proving damages on a class wide basis. Specifically, the Class was seeking both actual and statutory damages as a result of their receipt of the debt collection letter(s). 15 U.S.C. § 1692k(a)(1), (2)(B). The Class would have encountered significant difficulty proving actual damages from the receipt of the collection letter(s), because both courts and juries have ruled inconsistently on the issue of whether the defendants collection letters were deceptive and misleading.

6. The risks of maintaining the class through the trial

"Class certification is always conditional and may be reconsidered." Saunders, 2002 WL 1497374 at *12; see Rendler v. Gambone Bros. Dev. Co., 182 F.R.D. 152, 160 (E.D. Pa. 1998). It is reasonable to assume that the Defendants would have likely raised a number of issues in favor of decertification during trial and/or on appeal, and there is no certainty that the Class would have maintained certification. There is always a perpetual risk of maintaining the class throughout the trial and on appeal, and the Class has sufficiently eliminated this risk by entering into settlement with the Defendants.

7. The ability of the defendant to withstand a greater judgment

Although Defendant EDSI is financially stable today and would most likely be able to withstand a greater judgment than that offered by the proposed settlement, there are no assurances that EDSI would continue to experience a healthy economic outlook, especially in the event that the settlement were disproved and the class action were to proceed to trial. Furthermore, any greater judgment against the Defendants might lead to enforcement and collection problems.

8. The range of reasonableness of the settlement fund in light of the best possible recovery

The total settlement fund, minus roughly $69,000 in attorneys' fees and $4,000 to the Class representative, is approximately $22,000. Of the 1,969 notices sent to the Class members, 284 returned Claim Forms, leaving approximately $77.46 to each Class member. This amount is greater than many similar settlements, in similar class actions, in this district. See, e.g., Oslan, 232 F. Supp. 2d 436 ($62 per class member); Saunders, 2002 WL 1497374 at *15 ($62.54 per class member). Furthermore, the FDCPA's statutory damages are capped at the "lesser of $500,000 or one per centum of the net worth of the debt collector," 15 U.S.C. § 1692k, and therefore a gross settlement recovery of $95,000 is substantial in light of the $177,355 maximum potential recovery, and certainly "within the range of reasonableness."[4]

[4] EDSI's net worth at the time of settlement was approximately $17,733,588, thereby limiting the Class's maximum potential statutory damages to $177,335.88. However, prevailing on liability alone will not automatically dictate a full statutory damages award in favor of the Class, as numerous other factors are considered in assessing an appropriate award, such as the frequency and persistence of noncompliance, the nature of noncompliance, the resources of the debt collector, the number of persons adversely affected, and the degree to which the noncompliance was intentional. 15 U.S.C. §

9. The range of reasonableness of the settlement fund in light of all attendant risks of litigation

In In re Greenwich Pharmaceutical Securities Litig., 1995 WL 251293 (E.D. Pa. April 26, 1995), the court held that a $4.3 million settlement was within the range of reasonableness where the Plaintiff's estimate of total damages was $100 million. The court noted that, "[p]laintiff's most optimal estimate must be tempered by Defendants' repeated and vigorous claim of no damages," and that when "the probability of success at trial is factored into the equation, the settlement is obviously 'within the range of reasonableness.'" Again, in consideration of the inherent risks association with litigating the Class's claims, the $95,000 gross recovery is "within a range of reasonableness" that this Court is willing to accept.

Upon a careful balance of the nine Girsh factors it is obvious that this settlement proposal is in the best interest of all parties involved, especially the representative Plaintiff and the individual Class members, and is a fair, adequate, and reasonable alternative to a time-exhausting, costly, and unpredictable trial. See Saunders, 2002 WL 1497374 at *9 ("the district court acts as a fiduciary who must serve as a guardian of the rights of absent class members.")(citations omitted).

**D. Award to Class Representative**

The proposed settlement contemplates a $4,000 award from the Settlement Fund in favor of Mary Bonett, the Class representative. The award is composed of a $1,000 maximum statutory damages award, 15 U.S.C. § 1692k(a)(2)(B)(i), and $3,000 to compensate Bonett for

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1692k(b)(2). Therefore, 53.5% ($95,000/$177,355) of the maximum possible recovery for the Class is a fair, adequate, and reasonable recovery in a settlement proceeding.

her time, effort, and costs incurred in connection with her service to the Class.[5] The Court feels that this award is reasonable and consistent with the range of awards made in favor of class representatives in similar cases. See, e.g., Rossman v. Fleet Bank (R.I.), National Association, 2000 WL 33119419 (E.D. Pa. Dec. 18, 2000)(approving a $5,000 award to the representative plaintiff), *rev'd on other grounds by*, 280 F.3d 384 (3d Cir. 2002); Smith v. First Union Mortgage Corp., 1999 WL 1081362 (E.D. Pa. Dec. 1, 1999)(approving an incentive award of $7,500 to two class representatives in an FDCPA class action settlement); In re SmithKline Beecham Corp. Securities Litig., 751 F. Supp. 525, 535 (E.D. Pa. 1990)(approving $5,000 award to each of several class representatives).

**E. Attorneys' Fees and Reimbursement of Costs**

The court is required to thoroughly review the reasonableness of attorneys' fees in all class action settlements. Saunders, 2002 WL 1497374 at * 14; see also Prudential, 148 F.3d at 333 ("'[A] thorough judicial review of fee application is required in all class action settlements.'"(quoting General Motors, 55 F.3d at 819)). Counsel for the Class have combined their attorneys' fees into a single request of $69,000, however, this Court will first evaluate the hourly rates of Francis, Mailman, and Searles separately.

Francis submitted an hourly rate of $225.00, for 85.35 hours, totaling $19,203.75. (Document No. 41, at ex. 1). Similarly, Mailman submitted an hourly rate of $225.00, for 66.68 hours, totaling $15,003.00. (Document No. 41, at ex. 1). The firm's total charge was

[5] The proposed $4,000 award is substantially more than each individual Class member can expert to recoup from the settlement, however this outcome is authorized by the FDCPA. Fry v. Hayt, Hayt & Landau, 198 F.R.D. at 472.

$35,147.25.[6] (Document No. 41, at ex. 1). Francis and Mailman have previously been certified to serve as class counsel by the Eastern District of Pennsylvania, and its rates at the time, similar to those sought in the instant action, were approved as reasonable, and therefore this Court will approve the hourly rates sought by Francis and Mailman. See, e.g., Oslan, 232 F. Supp. 2d 436 (approving Francis and Mailman's lodestar request based on a submitted hourly rate of $225.00 per hour in FDCPA Class Action); Saunders, 2002 WL 1497374 (approving hourly rates of $200.00 for Francis and Mailman in FDCPA Class Action for services performed in 2000). Searles submitted an hourly rate of $390.00, for 107.3 hours, totaling $41,847.00. (Document No. 41, at ex. 2). The firm's total charge was $42,347.00.[7] (Document No. 41, at ex. 2). The Court will also approve Searles's rates as reasonable and consistent with prior awards for this attorney in this district. See, e.g.,Id. at *15 (awarding lodestar at requested rates, finding the rates "fair and reasonable in light of [counsel's] education, experience and prior awards, and commensurate with the prevailing hourly billing rates of similarly-experienced class action litigators in this area"); Smith, 1999 WL 1081362 (approving hourly rates to Class Counsel in settlement of class action under FDCPA).

The combined charges of Searles's firm and Francis and Mailman's firm totals $77,494.25, however, their combined request for attorneys' fee and reimbursement of expenses is limited to $69,000. The Court is aware that the proposed attorneys' fees and reimbursement of

[6] Paralegal Patti Sullivan also contributed 9.90 hours, at a $95.00 hourly rate, thereby accounting for the difference of Francis and Mailman's combined fees and the total charge of $35,147.25.

[7] Paralegal Christian Koerner contributed 4.0 hours, at an hourly rate of $125.00, thereby accounting for the difference between $42,347.00 and $41,847.00.

expenses are significantly higher than the remaining Settlement Funds for the Class, but the Court is confident that the hourly rates and the total hours exhausted by the attorneys is a fair and reasonable representation of the work required in this particular class action. See also Oslan, 232 F. Supp 2d at 444 (E.D. Pa. 2002)("Although the award of attorneys' fees exceeds the award to the Class, there is no rule of strict proportionality that counsel the court to decrease attorneys' fees in order to match successful judgments or settlement awards."). The proposed attorneys' fees and reimbursement of expenses are approved.

## III. CONCLUSION

Based on the foregoing reasons, Plaintiff's Motion for Final Approval of the Class Action Settlement and Award to the Representative Plaintiff will be granted, and Plaintiff's Motion for Award of Attorneys' Fees and Reimbursement of Expenses will also be granted. An appropriate order follows.

BY THE COURT:

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Legrome D. Davis, U.S.D.J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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| MARY BONETT, | : | CLASS ACTION |
| Plaintiff, | : | |
| | : | |
| v. | : | NO. 01-6528 |
| | : | |
| EDUCATION DEBT SERVICES, INC., et al., | : | |
| Defendants. | : | |

**ORDER**

AND NOW, this day of May, 2003, upon consideration of: (i) Plaintiff's Motion for final Approval of the Class Action Settlement and Award to the Representative Plaintiff (Document No. 40, filed April 11, 2003); and (ii) Plaintiff's Motion for Attorneys' Fees and Reimbursement of Expenses (Document No. 41, filed April 11, 2003) it is hereby **ORDERED** that the Motions are **GRANTED** according to the following terms:

1. The Settlement Agreement submitted herein is approved as fair, reasonable, and adequate pursuant to Rule 23 of the Federal Rules of Civil Procedure, and the parties are directed to consummate such agreement in accordance with its terms. All terms defined in the Settlement Agreement have the same meanings when used herein.

2. The Litigation is hereby dismissed, with prejudice and without costs, and all Class Members who did not timely request exclusion shall be barred and enjoined from bringing any and all claims, actions and causes of action that were asserted in the Litigation against EDSI or that relate to or arise from the initiation, litigation or settlement of the Litigation or the administration of the settlement, against (i) Representative Plaintiff; (ii) EDSI; (iii) its respective heirs, parents, partners, contractors, clients, subsidiaries and affiliates; (iv) the partners, directors, officers, employees, attorneys, agents, successors and assigns, both past and present, of EDSI; (v)

any attorney for EDSI, the Representative Plaintiff, her agents, employees, successors and assigns (collectively, the "Released Parties").

3. Defendant EDSI and the Released Parties are hereby enjoined and barred from brining any claim, action, or cause of action against the Representative Plaintiff or any of her attorneys, administrators, successors, or assigns that have been released under the Settlement Agreement. Notwithstanding anything in this paragraph to the contrary, however, nothing in this Final Judgment and Order shall preclude, prohibit, limit or prevent EDSI or any of the Released Parties from otherwise engaging in any lawful collection efforts.

4. The Representative Plaintiff is awarded $4,000 in full settlement of her individual claims, pursuant to 15 U.S.C. § 1692k(a)(2)(B)(i). Upon the Effective Date, Class Counsel shall pay such award to the Representative Plaintiff from the Settlement Fund.

5. Upon the Effective Date, Class Counsel shall pay the sum of $22,000, plus accrued interest, from the Settlement Fund to EDSI. Within 10 days thereafter, EDSI shall distribute that sum equally among the Claiming Class Members. Upon making such payments, EDSI shall serve upon Class Counsel and file with the Court a report itemizing all payments made to Claiming Class Members.

6. To the extent that Claiming Class Members' checks are returned or remain uncashed for a period of 90 days after mailing, or if for any other reason there still remains a portion of the Settlement Fund undistributed, such sums shall be subject to final distribution upon application to the Court by motion requesting cy pres distribution to all or any one of the following entities, to be selected by the Court in the absence of the parties' agreement: Community Legal Services, Inc., Philadelphia Legal Assistance, National Consumer Law Center. EDSI will account to the Court and to Class counsel, within 30 days of the expiration date of the originally issued checks,

concerning the number of uncashed checks, if any, so that an agreement can be reached with regard to the cy pres distribution, if any. In no event shall any portion of the Settlement Fund or uncashed checks revert to EDSI.

7. Consummation of the Settlement shall proceed as described in the Settlement Agreement. Plaintiff's counsel is awarded fees and reimbursement of expenses in the total amount of $69,000, plus interest, which shall be paid from the Settlement Fund in accordance with the Settlement Agreement.

BY THE COURT:

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Legrome D. Davis, U.S.D.J.